

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SEAN MICHAEL CARNEY

§

v.

§

A-10-CA-128 SS

UNITED STATES

§

**REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

**TO: THE HONORABLE SAM SPARKS
UNITED STATES DISTRICT JUDGE**

Before the Court is Petitioner's application for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 (Clerk's Doc. No. 1). The undersigned Magistrate Judge submits this Report and Recommendation to the United States District Court pursuant to 28 U.S.C. § 636(b) and Rule 1(e) of Appendix C of the Local Court Rules of the United States District Court for the Western District of Texas, Local Rules for the Assignment of Duties to United States Magistrate Judges.

On February 22, 2010, Sean Carney filed a petition challenging his confinement under 28 U.S.C. § 2241. Petitioner is currently confined in Ellis Unit, which is a TDCJ facility located in Huntsville, Texas. Under 28 U.S.C. § 2241, the writ can be sought by a federal prisoner only from a district court with jurisdiction either over the prisoner or his custodian. Because this court does not have jurisdiction over the prisoner or his custodian, the writ may not be sought in this court. Accordingly, the undersigned recommends that Carney's petition be dismissed for improper venue.

RECOMMENDATION

Based upon the foregoing, the undersigned Magistrate Judge **RECOMMENDS** that the District Court **DISMISS** Sean Carney's application for writ of habeas corpus brought pursuant to 28 U.S.C. § 2241 (Clerk's Doc. No. 1) for improper venue.

WARNINGS

The parties may file objections to this Report and Recommendation. A party filing objections must specifically identify those findings or recommendations to which objections are being made. The District Court need not consider frivolous, conclusive, or general objections.

Battles v. United States Parole Comm'n, 834 F.2d 419, 421 (5th Cir. 1987).

A party's failure to file written objections to the proposed findings and recommendations contained in this Report within fourteen (14) days after the party is served with a copy of the Report shall bar that party from de novo review by the district court of the proposed findings and recommendations in the Report and, except upon grounds of plain error, shall bar the party from appellate review of unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See* 28 U.S.C. § 636(b)(1)(C); *Thomas v. Arn*, 474 U.S. 140, 150-153, 106 S. Ct. 466, 472-74 (1985); *Douglass v. United Services Automobile Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc).

To the extent that a party has not been served by the Clerk with this Report & Recommendation electronically pursuant to the CM/ECF procedures of this District, the Clerk is directed to mail such party a copy of this Report and Recommendation by certified mail, return receipt requested.

SIGNED this 26th day of April, 2010.



ANDREW W. AUSTIN
UNITED STATES MAGISTRATE JUDGE